

Exhibit 1

FOIA Request from Defenders
of Wildlife to the USFS on
February 22, 2022



Southeast Field Office

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FOIA Officer
Forest Service
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Dear FOIA Officer:

Defenders of Wildlife works nationwide to protect all native animals and plants in their natural communities. Public lands, particularly national forests, provide some of the most important habitats for these species. For years, we have relied on the processes under the National Environmental Policy Act (“NEPA”) to know when specific actions are being considered in specific places on national forests and to understand how those actions will affect plants and animals. This information has been critical in helping us fulfill our mission of protecting and restoring species and their habitats. We have also used the NEPA process to work with the Forest Service to achieve better outcomes—helping the agency fulfill its mission while avoiding unacceptable harm. Finally, the NEPA process has been instrumental in helping our members and the public understand the actions proposed on public lands.

These benefits accrue typically through preparation of Environmental Assessments (“EA”) or Environmental Impact Statements (“EIS”). In our experience, the Forest Service routinely changes projects over the course of EA or EIS development in response to information provided by the public related to harms or opportunities that were not apparent to the agency when it initially proposed its project. We are highly concerned about use of the Categorical Exclusions finalized by the agency in 2020 because they contemplate authorizing projects which risk significant impacts without undergoing the process that has historically ensured those impacts are avoided or mitigated—preparation of EAs and EISs. *See* 85 Fed. Reg. 73,620 (Nov. 19, 2020). The use of Categorical Exclusions does not require the same degree of public involvement, information sharing, and analysis as the use of EAs and EISs. The use of Categorical Exclusions also provides limited ability for us to share our own information and data with the agency—some of which we cannot develop until we know when and where a project is being proposed. We are confident that use of Categorical Exclusions to authorize large commercial timber sales (36 C.F.R. § 220.6(e)(25)), roadbuilding projects (36 C.F.R. § 220.6(e)(24)), and special uses up to 20 acres (36 C.F.R. § 220.6(e)(3)), will result in poorer decisions and more unnecessary harm to native plants and wildlife.

We are sending this Freedom of Information Act (“FOIA”) request in an effort to learn about projects the Forest Service is considering approving with these new Categorical Exclusions. Typically, some of the information we seek would be developed and disclosed through the EA or EIS processes. Since those processes will no longer be available for these projects, we are forced to resort to FOIA. Accordingly, pursuant FOIA, 5 U.S.C. § 552 and 7 C.F.R. § 1.5, we hereby request access to the following documents or other public records:

- All records related to the use, or potential use, of the Categorical Exclusions codified at 36 C.F.R. §§ 220.6(e)(3), (e)(24), and (e)(25). This includes all records related to projects that may be authorized under these Categorical Exclusions. It also includes requests from Forest Service staff to use the Categorical Exclusions and responses to those requests.

This request for documents or other records includes all reports, studies, surveys, correspondence, memoranda, e-mails, proposals regarding use of these Categorical Exclusions, analyses, meeting notes or other notes of any kind, drafts

and working papers, and every other document, recorded communication, or record of any kind (including records that exist electronically). This request includes communications that took place over electronic messaging platforms such as Google Hangout, Skype, or Google Chat. In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. We request access to all relevant documents in the Forest Service's possession whether they were created, edited, received, or forwarded by the Forest Service.

Please include records from December 21, 2020, up to the date that you commence searching for responsive records.

If you take the position that any of the above-described public records are not open to public inspection under FOIA, please explain the basis for your position and identify any statute, rule of law, or other authority upon which you rely. In accordance with FOIA, 5 U.S.C. § 552(b), please produce all segregable portions of responsive documents and justify any redactions by reference to specific FOIA exemptions, including grounds for your reasonable belief that disclosure would harm an interest protected by the referenced exemption. *See* 5 U.S.C. § 552(a)(8)(A)(i)(I).

If fees will be incurred for search time or document reproduction, we request that the fees be waived as provided by 5 U.S.C. § 552(a)(4)(A)(iii), because public disclosure of the requested information "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

This request concerns actions proposed by the U.S. Forest Service on national forest system lands—it unquestionably concerns the actions of the federal government.

Disclosure of the requested information is likely to contribute to increased public understanding of the activities and operations of the federal government. We are requesting this information to help us and the public understand what Forest Service projects are upcoming, under analysis, have been considered, or have been previously approved using the new Categorical Exclusions. For years, the type of information we expect to be produced in response to this request has led to increased public understanding of the activities and operations of the Forest Service. In the past, this information has often been provided through the NEPA process, but we are now having to pursue it through FOIA. Disclosure of the information will also help us identify potential on-the-ground effects the Forest Service appears to be overlooking in its use of these new Categorical Exclusions in specific places. We will bring these oversights to the Forest Service's attention even if the typical NEPA processes are unavailable to us. Overall, disclosure of the requested information will help mitigate harm inflicted by use of the new Categorical Exclusions.

The contribution to public understanding by disclosure of the requested materials is likely to be significant. As noted above, for years disclosure of similar information has resulted in meaningful changes to Forest Service projects. Here, disclosure of this information will be significant because the public may be able to use it, as it has done in the past, to advocate for changes to projects to help the Forest Service avoid significant impacts. Alternatively, disclosure of the requested information may be significant because it will demonstrate the harms inflicted by use of the Categorical Exclusions instead of EAs or EISs.

Defenders of Wildlife has many years of experience educating the public and sharing information regarding public lands and protection of resources on national forests. Staff members at Defenders of Wildlife are interviewed by the media to explain their work and its significance to forest species. We also educate the public by speaking at conferences and other public meetings about protection and restoration of habitats on national forest lands. We intend to share the information produced in response to the request with members of the public, media, and other groups that work on national forest issues.

Defenders of Wildlife has no commercial interest in the disclosures. We are a nonprofit organization with a public interest mission and, by definition, no commercial interests. We seek the disclosure solely in the public interest of

obtaining information about activities and operations of the federal government and advocating for changes that will benefit the public interest in sustaining healthy plant and animal habitats. We do not profit or otherwise have commercial interests in document review, nor do we sell or distribute government information for financial gain.

We request that information be delivered electronically, by a file-sharing service, removable storage, or email, to the extent possible. We are happy to coordinate provision of a file-sharing service.

If you have any questions, please do not hesitate to contact us. We welcome further conversation about ways to reduce the burden of responding to our request while ensuring we receive all responsive documents in a timely manner.

Respectfully Submitted,



Ben Prater
Defenders of Wildlife
Southeast Program Director

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